

**TELECOMMUNICATIONS BUSINESS ACT,
B.E. 2544 (2001)¹**

BHUMIBOL ADULYADEJ, REX.

Given on the 9th Day of November B.E. 2544;

Being the 56th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on telecommunications business;

This Act contains certain provisions in relation to the restriction of rights and liberties of a person, in respect of which section 29 in conjunction with section 34, section 37, section 39, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by the virtue of law;

Be it, therefore, enacted by the King by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Telecommunications Business Act, B.E. 2544 (2001)”.

Section 2.² This Act shall come into force as from the day following the date of its publication in the Government Gazette.

¹ Translated by Ms. Arriya Phasee under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

Section 3. The following shall be repealed:

- (1) Telegraph and Telephone Act, B.E. 2477 (1934);
- (2) Telegraph and Telephone Act (No. 2), B.E. 2517 (1974).

Remark: Reference to Thai legislation in any jurisdiction shall be made to the Thai version only. This translation has been made so as to establish correct understanding about this Act to foreigners.

Section 4. In this Act:

“telecommunications business” means the telecommunications business under the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses;

“telecommunications business operation” means the operation in the way of providing services in relation to telecommunications business to other general persons;

“telecommunications number” means any one or a combination of digits, letters or any other symbols which are used to indicate destination in a telecommunications network for telecommunications purpose;

“telecommunications network” means the set of telecommunications equipment which is directly connected or connected through switching equipment or any other equipment for telecommunications between defined destinations via any one or a combination of wire, frequency spectrum, optical or any other electromagnetic systems;

“connection” means the connection of telecommunications networks under technical and commercial agreements to enable the service users of a telecommunications

² Published in the Government Gazette Vol. 118, Part 106a, Page 11, dated 16th November B.E. 2544 (2001).

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business operator to communicate with the service users or to use the telecommunications service of another telecommunications business operator;

“Commission” means the National Telecommunications Commission under the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses;

“Office” means the Office of the National Telecommunications Commission;

“Secretary-General” means the Secretary-General of the National Telecommunications Commission;

“competent official” means a person appointed by the National Telecommunications Commission, through publication in the Government Gazette, to execute this Act.

Section 5. The Prime Minister shall have charge and control over the execution of this Act.

Section 6. The Commission shall have the power to appoint competent officials and issue Notifications prescribing other acts for the execution of this Act.

Such Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

TELECOMMUNICATIONS BUSINESS LICENSING

Section 7. Any person who wishes to operate a telecommunications business in accordance with the characteristics and categories prescribed in the Notification by the

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Commission under the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses shall obtain a license from the Commission.

There shall be three types of a telecommunications business license as follows:

(1) Type One License: being a license for the telecommunications business operator who does not have his or her own telecommunications network and the characteristics of his or her business are deemed appropriate to provide services on the basis of liberalisation. When the person wishing to operate the business with such characteristics has notified the Commission, the Commission shall issue a license for business operation;

(2) Type Two License: being a license for the telecommunications business operator who has or does not have his or her own network and whose business is intended to provide services for a limited group of people or has no significant impacts on free and fair competition or on public interest and consumers. When the person wishing to operate the business with such characteristics has completely fulfilled the standard criteria prescribed in the Notification in advance by the Commission, the Commission shall issue a license for business operation;

(3) Type Three License: being a license for the telecommunications business operator who has his or her own network and whose business is intended to provide services to a large number of the general public or may have significant impacts on free and fair competition or on public interest or requires special consumer protection. When the person wishing to operate the business with such characteristics has been considered appropriate by the Commission for the issuance of a license, such person may then commence the operation.

The characteristics or categories including the scope of services of telecommunications business to which the licensee under Type One, Type Two or Type Three is entitled shall be as prescribed in the Notification by the Commission, which shall be

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in accordance with the characteristics of business operation of each type of license under paragraph two and shall take into account the development of diverse service provisions of telecommunications business and fairness among operators.

In applying for a license, the applicant shall specify the type of the license to be applied for together with the characteristics or categories of telecommunications business he or she wishes to operate. If he or she wishes to engage in any additional business operation of different characteristics or categories after he or she has been licensed, he or she shall inform the Commission prior to the commencement of such operation. In this case, the Commission may prescribe conditions to be observed by the applicant.

Section 8. The Commission shall prescribe in the Notification and disclose to the general public the licensing criteria to enable the person who wishes to operate the business to be informed in advance of the applicant qualification, the application procedure and the license granting criteria. The granting criteria shall be determined differently in accordance with the types of license under section 7 and shall be consistent with each characteristic and category of telecommunications business and the guidelines on frequency spectrum licensing and telecommunications business licensing as stipulated in the Telecommunications Master Plan and the Frequency Plan under the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses.

In the Notification under paragraph one, the Commission shall prescribe details in relation to the applicant qualification, the application procedure, the documents, evidence or information necessary for the licensing procedure, the licensing consideration procedure, the consideration period of the Commission, scope of license, maximum and minimum term of license including other conditions necessary for business operation.

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Determination of the applicant qualification shall be in accordance with the following criteria:

(1)³ the applicant for Type Two License and Type Three License shall not be a foreigner under the law on foreign business. In this regard, the Commission may require the applicant for certain characteristics or categories of telecommunications business who is a juristic person to prescribe the prohibition of any act which has the nature of business takeover by a foreigner;

(2) the applicant shall not be bankrupt;

(3) the applicant shall not have previously had a telecommunications business license revoked;

(4) the directors, managers or persons having management power of the applicant shall not have been sentenced by a final judgment for an offence under this Act or under the law on telegraph and telephone, the law on radio communication or the law on consumer protection during a two-year period prior to the filing of the application for a license;

(5) the applicant for Type Three License shall have an investment plan and a service provision plan for telecommunications business that enables the efficient service provisions;

(6) the applicant shall have other qualifications and have no other prohibited characteristics prescribed by the Commission for each type of license under section 7.

³ Section 8, paragraph three (1) has been amended by the Telecommunications Business Act (No. 2), B.E. 2549 (2006).

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Section 9. The term of telecommunications business operation under Type Three License shall be as stipulated in the license, which shall be within the maximum and minimum term prescribed in the Notification by the Commission.

With regard to the application for a renewal of Type Three License, the licensee shall file the application before his or her license has expired. When the application has been filed, it shall be deemed that the applicant has the status of a licensee until receiving an order of non-renewal of the license. In this regard, the Commission shall consider and notify the licensee of its order within thirty days from the date of receipt of the application.

The filing of the application for a license renewal and the permission of renewal shall be in accordance with the rules, procedures and conditions prescribed in the Notification by the Commission, which shall be consistent with the criteria under section 8.

In determining the term of a license and its renewal, the Commission shall take into account timeframe according to the investment plan, scope of services, the applicant's business development direction, consumer protection in terms of uninterrupted service access and business performance assessment.

Telecommunications business operation under Type One License or Type Two License may continue to operate throughout its service period. In the case where the licensee wishes to discontinue the business, he or she shall inform the Commission not less than one month in advance. The Commission may prescribe conditions to be observed by the licensee prior to the discontinuity of business.

Section 10. In applying for a telecommunications business license, if that telecommunications business uses frequency spectrum, the applicant for the license shall also obtain a license to use the frequency spectrum in accordance with the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses.

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In the case where the license to use any frequency spectrum of the licensee is revoked, it shall be deemed that the telecommunications business license with respect to the business part that uses such frequency spectrum is also revoked.

Section 11. A licensee shall pay the fee for the use of frequency spectrum, the fee for telecommunications numbers and the fee for a business license in accordance with the rates, criteria and procedures prescribed by the Commission. Such fees, however, shall not cause unreasonable burden to the operators or the service users.

In determining the rates and criteria of the fee for the use of frequency spectrum and the fee for telecommunications numbers, the Commission shall take into account public interest, worthiness, scarcity and allocation procedure of such resources.

In determining the rates and criteria of the fee for a telecommunications business license, the Commission shall take into account the type of license and the expenditure for regulating telecommunications business operation arising out of the performance of the duties under this Act.

Section 12. In issuing a license for telecommunications business that requires the use of telecommunications numbers as stipulated in the telecommunications number plan, the Commission shall assign telecommunications numbers to be used for the supply of service or service area of the licensee's telecommunications business operation.

The licensee may supply to the general public only the telecommunications numbers assigned by the Commission.

In the case where it appears that the licensee fails to supply the assigned telecommunications numbers to service users without valid reason, or supplies to service users the telecommunications numbers which are not assigned to him or her, the Commission shall have the power to order the licensee to perform as authorised or suspend

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the use of such telecommunications numbers, and in this case the licensee may not claim for any damages.

In order to protect service users' interest and when technically feasible, the Commission shall establish the guidelines and criteria for the service users to be entitled to use their existing telecommunications numbers when they intend to change a service provider, location or category of service. In this regard, the Commission shall arrange to listen to opinions from the licensees concerned.

Subject to the measures prescribed by the Commission under section 50, paragraph one, the licensee shall have the duty to provide information of the users of telecommunications numbers to the persons requesting it for the purpose of preparation of user directory, and may charge only for the cost of providing such information.

Section 13. For the purpose of assigning telecommunications numbers to licensees for use in supplying services, the preparation of the telecommunications number plan of the Commission under the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses shall consist of the following criteria:

- (1) there shall be sufficient telecommunications numbers for the supply of services;
- (2) there shall be efficient and fair use of telecommunications numbers;
- (3) the telecommunications number plan shall facilitate simple and clear identification of the characteristics and categories of services and devices used in the telecommunications business;
- (4) the telecommunications number plan may be revised only in the case of necessity.

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In the case where the Commission establishes the telecommunications number plan or revises the telecommunications number plan, in whole or in part, the licensees shall have the duty to comply with the criteria prescribed by the Commission.

Section 14. In the case where a licensee wishes to request an expansion of the service provision by adding telecommunications numbers for use in the supply of service or by expanding the service area, he or she shall file an application to the Commission.

In the case where the Commission views that the addition of the telecommunications numbers or the expansion of the service area will be of public interest and is not in a way to pose a restriction to fair competition on telecommunications business, the Commission may consider permitting the licensee to proceed with such action in accordance with the criteria and conditions prescribed by the Commission. In this regard, the Commission shall consider the application and inform the licensee within thirty days from the date of receipt of the application. In granting permission, the Commission shall impose the fee for telecommunications business operation on such additional permitted part in accordance with the criteria prescribed by the Commission.

Section 15. In operating the telecommunications business, the licensee shall comply with the criteria stipulated in the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses and the conditions prescribed by the Commission.

In prescribing the licensing conditions, the Commission shall clearly state specific rights, duties and responsibilities of the licensee, including his or her service provision plan for telecommunications business which shall at least include the step and timeframe of service commencement, details on characteristics or categories of the service provision, service fees, the provision of notification service with respect to the users of

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telecommunications numbers and other matters necessary for the provision of service for public interest.

In the case where there is an essential ground to protect public interest or there is a change in laws or circumstances, the Commission shall have the power to revise the licensing conditions as necessary.

Section 16. In the case where a licensee is permitted to operate the business with the assigned telecommunications numbers or in the specified area, if it appears to the Commission that the licensee fails to provide the service in accordance with the service provision plan for telecommunications business stipulated as licensing conditions under section 15 without valid reason and the Commission deems that such failure has an impact on the public interest, the Commission shall have the power to withdraw the specified amount of telecommunications numbers or scale down the size of the permitted service area, and in this case the licensee may not claim for any damages.

Section 17. The Commission shall have the duty to cause to have universal provision of fundamental telecommunications services and shall have the power to require licensees to arrange to provide the following telecommunications services:

- (1) telecommunications service in rural areas or areas with the low rate of return on investments or in any locality where no one has provided the service or there is the service provision but it is not universal or is inadequate to meet the demand of service users in that locality;
- (2) telecommunications service for educational institutions, religious places, clinics and other social assistance agencies;
- (3) public telecommunications service of certain characteristics or categories for low income persons as prescribed by the Commission;

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(4) services facilitating the use of public telecommunications service for disabled, children, senior citizens and underprivileged in the society.

The rules, procedures and conditions for requiring licensees to arrange to provide the telecommunications services under paragraph one shall be as prescribed in the Notification by the Commission.

The Commission shall arrange to issue the Notification under paragraph two in advance to enable the person wishing to apply for a license to be informed of the scope of the provision of telecommunications services under paragraph one prior to the filing of the application.

The determination requiring licensees to arrange to provide telecommunications services under this section shall not pose undue burden on the investment of the licensees and shall ensure equal treatment among the licensees who operate telecommunications business of the same characteristics and categories.

Section 18. In the case where any licensee is unable to arrange to provide telecommunications services as prescribed by the Commission under section 17, or in the case where it is deemed appropriate for a licensee to take part in taking responsibility for providing fundamental telecommunications services universally, the Commission shall have the power to require such licensee to contribute the revenue received from the provision of telecommunications service to the Telecommunications Development Fund for Public Interest pursuant to the law on the organisation to assign frequency spectrum and to regulate radio broadcasting, television and telecommunications businesses for the operation to provide telecommunications services under section 17.

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Section 19. The Commission shall have the power to prescribe any measure to support and promote the opportunity of new licensees to provide telecommunications service in any locality to compete with other licensees in an efficient, equal and fair manner.

Section 20. A licensee may not suspend or cease to provide the service, in whole or in part, unless he or she has obtained permission from the Commission in accordance with the criteria and procedures prescribed by the Commission.

A licensee may not decline to provide service to a certain person without valid reason.

Section 21. In the telecommunications business operation, other than being subject to the law on trade competition, the Commission shall prescribe specific measure according to the characteristics of the telecommunications business operation to prevent the licensee from carrying out any act that is monopolistic, or that reduces or limits the competition in the provision of telecommunications service in the following matters:

- (1) subsidisation of services;
- (2) holding in businesses of the same category of service;
- (3) abuse of market power;
- (4) anti-competition behavior;
- (5) protection of small entrepreneurs.

Section 22. A licensee shall report to the Secretary-General without delay upon occurrence of the following events:

- (1) the licensee suffers serious damage which may cause problems in the provision of telecommunications service;

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(2) the licensee intends to operate telecommunications business other than that authorised;

(3) the licensee intends to enter into a contract entrusting other persons with the power, in whole or in part, in the management of the licensee's business;

(4) the licensee acts or is acted upon in such manner as the business takeover or business taken over pursuant to the law on securities and securities exchange;

(5) any incident which affects or is likely to affect the business operation or the service provision of the licensee as prescribed in the Notification by the Commission.

The licensee shall report the events under (2) and (3) prior to carrying out the relevant act. In case of (1), (4) and (5), the licensee shall report immediately upon occurrence of the event.

When the Secretary-General has acknowledged a report under paragraph two, the Secretary-General shall immediately propose the matter to the Commission. In this regard, the Commission shall have the power to prescribe a condition requiring the licensee to perform any act to prevent damage to public interests.

Section 23. The Commission may require a licensee to arrange to have the recording system for information about the evidence of the use of telecommunications service of the service users to enable verification by the service users.

Section 24. In the case where telecommunications business operation of certain characteristics or categories has involved specific technologies and is not applicable under the provisions of this chapter, the Commission shall have the power to prescribe conditions for the telecommunications business operation of such characteristics and categories.

Determination of the conditions for the telecommunications business operation under paragraph one shall be as prescribed in the Notification by the Commission.

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CHAPTER II

USE AND CONNECTION TO TELECOMMUNICATIONS NETWORK

Section 25. A licensee who has a telecommunications network shall have the duty to allow other licensees to connect their telecommunications networks to his or her telecommunications network in accordance with the criteria and procedures prescribed by the Commission.

A licensee who has a telecommunications network shall allow other licensees to use his or her telecommunications network in accordance with the criteria and procedures prescribed by the Commission.

Refusal of the use of a telecommunications network can be made only in the following cases:

- (1) the existing telecommunications network is inadequate for the use by other licensees;
- (2) the use of the telecommunications network has technical problems that may cause disturbance to telecommunications business or may be an obstacle to telecommunications;
- (3) other cases as prescribed in the Notification by the Commission.

The licensee having a telecommunications network who refuses the use of the telecommunications network under paragraph three shall have the duty to prove his or her grounds for such refusal.

Collection of compensation for the use or connection to a network shall be reasonable and fair for the licensee having a telecommunications network and the person requesting for the use or connection to the telecommunications network and shall be equal

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for all of the persons requesting for the use or connection to the telecommunications network.

In determining the criteria and conditions under paragraph one and paragraph two, the Commission shall arrange to listen to opinions from the licensees concerned.

Section 26. In the case where there is a refusal of the use of a telecommunications network or there is disagreement on any particular matter in the negotiation on the contract for the use or connection to a telecommunications network, the parties shall have the right to request the Commission to consider and make a decision in accordance with the criteria and procedures prescribed in the Notification by the Commission. The decision of the Commission shall be final.

During the consideration of the Commission under paragraph one, in the case of necessity, the Commission may order to permit the use or connection to the telecommunications network on a provisional basis in accordance with the criteria and procedures prescribed by the Commission.

Section 27. The contract concerning the use or connection to a telecommunications network shall contain the terms in the following characteristics:

- (1) they must not cause any loss of benefit to service users;
- (2) they must not discriminate against, separate or hinder other licensees;
- (3) the technical specifications at the end-use points or at the point of connection to the telecommunications network must be clear, technically feasible and do not create any undue burden on the person who requests to use or connect to the telecommunications network;

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(4) duties and responsibilities of the person who requests to use or connect to the telecommunications network and the person who allows the use or connection to the telecommunications network must be clearly established;

(5) compensation for the use or connection to the telecommunications network must be determined in accordance with the criteria under section 25, paragraph five;

(6) other characteristics as prescribed in the Notification by the Commission.

The licensee who owns the telecommunications network shall submit a copy of the contract to the Commission within ten days from the execution date of the contract. If the Commission views that the terms in the contract do not comply with the characteristics under paragraph one, the Commission shall have the power to order the amendment within a specified period of time. If the licensee who owns the telecommunications network does not agree to amend the contract as required by the Commission, the provision of section 65 shall apply, *mutatis mutandis*. Nonetheless, if the person who does not agree to the amendment of the contract is the person who requests the use or the connection to the telecommunications network, it shall be deemed that such contract is void.

Section 28. The licensee shall notify correct information that is necessary for the use or connection to the telecommunications network to other licensees who request to use or connect to the telecommunications network, and shall not take any action that prevents the normal use or connection to the telecommunications network by other licensees.

When there is a change to a telecommunications network which affects the use or connection to the telecommunications network, the licensee having the telecommunications network shall give a notice of change in advance in a reasonable period of time, but not less than six months.

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Section 29. The licensee who owns the telecommunications network shall disclose to the public the contract for the use or connection to the telecommunications network in accordance with the procedures prescribed by the Commission.

Section 30. In the case where there is a change in economic or social condition or there is any circumstance causing the compensation for the use or connection to a telecommunications network stipulated in the relevant contract no longer appropriate, resulting in the existence of advantages and disadvantages among licensees which poses undue burden to either party, the licensee which is a party to such contract may request for the adjustment of such compensation from the Commission. In granting permission, the Commission shall also take into account the impact on service users.

Section 31. For the benefit of national security or for the prevention of disaster that may cause damage to the public or for the common public interest, when requested by the Government, the Commission shall take action to provide the use or connection to a telecommunications network between a licensee and relevant State agency. In this case, the licensee shall have the duty to comply with the order of the Commission.

CHAPTER III

STANDARD OF TELECOMMUNICATIONS NETWORK AND DEVICE

Section 32. The Commission shall have the power to issue a Notification requiring certain categories of a telecommunications network, telecommunications equipment or device used in telecommunications business that affect the provision of telecommunications service to conform to the specified technical standards.

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The Commission may issue a Notification requiring certain categories of device used in a telecommunications network, telecommunications equipment or device used in telecommunications business to be inspected and standard-certified prior to use in the provision of telecommunications service.

Section 33. A licensee shall maintain, repair and fix the telecommunications network, telecommunications equipment and devices used in telecommunications business which are used by the licensee for providing telecommunications service to ensure their efficient operations and compliance with the technical standards as stipulated in the Notification issued under section 32.

Section 34. A licensee under Type Three shall have engineers with qualifications and in the number prescribed by the Commission to supervise the telecommunications service operation, the installation, the inspection and the maintenance of a telecommunications network, telecommunications equipment and devices used in telecommunications business of the licensee to ensure conformity with technical standards.

Section 35. The Office shall have the power to perform a standard inspection and certification for devices used in a telecommunications network, telecommunication equipment and devices used in telecommunications business according to the Notification of the Commission under section 32, paragraph two, or according to the request from any person wishing to have the standard inspection and certification.

The standard inspection and certification under paragraph one shall be in accordance with the rules prescribed in the Notification by the Commission.

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Section 36. Any person wishing to perform a standard inspection and certification shall establish a standard inspection and certification agency for devices used in a telecommunications network, telecommunication equipment and devices used in telecommunications business. Such agency shall be a juristic person and must obtain a license from the Commission.

The qualifications of an applicant for a license, the filing of the application for a license, the issuance of a license, the term of a license, the renewal of a license and the fee for the issuance and renewal of a license shall be in accordance with the rules, procedures and conditions prescribed in the Notification by the Commission.

The inspection and certification agency shall have inspectors with qualifications and in the number prescribed by the Commission.

In permitting the establishment of an inspection and certification agency, the Commission may prescribe any conditions as appropriate to the case.

Collection of the fee for the standard inspection and certification by the licensee under paragraph one shall be in accordance with the rates prescribed by the Commission.

Section 37. The Commission shall have the power to revoke a license to establish an inspection and certification agency in the following cases:

- (1) the licensee authorised to establish an inspection and certification agency lacks the qualifications stipulated in the Notification issued under section 36, paragraph two;
- (2) the inspection and certification agency performs inspection or reports or certifies inspection results in bad faith;
- (3) the inspection, the reporting of inspection results or the certification is performed with delay without valid reason, which causes serious damage to a person requesting inspection;

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(4) the inspection and certification agency has an inspector whose qualifications do not meet the requirements or has insufficient number of inspectors as prescribed by the Commission.

The revocation of the license under paragraph one shall not affect the standard certification performed by an inspection and certification agency before the license has been revoked, unless the certification was performed in bad faith or not in compliance with the standards prescribed by the Commission, in which case, the Commission may consider ordering to revoke such standard certification.

In the case where any person has suffered damage from the revocation of a standard certification under paragraph two, in the case that such person did not participate in such bad-faith act, the inspection and certification agency whose license has been revoked shall have the duty to indemnify the damage suffered by such person.

Section 38. In the case where a telecommunications network, telecommunications equipment or any other device of a licensee does not function, does not function as usual, causes disturbance to telecommunications business or is not in conformity with the standards stipulated in the Notification issued under section 32, a competent official shall have the power to order the licensee to rectify, modify or suspend the use of such telecommunications network, equipment or device.

The provision of paragraph one shall apply to the equipment used in telecommunications of the service users, *mutatis mutandis*.

CHAPTER IV RIGHTS OF LICENSEE

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Section 39. In the operation to provide telecommunications service, if the licensee has to insert or install poles or lay lines or place ducts or install any accessories, and requires to exercise the rights under this section, the licensee shall prepare a diagram showing details of the characteristics of the directions and boundaries for inserting or installing poles, laying lines, placing ducts and installing any accessories for proposing to the Commission for approval prior to the implementation.

When the Commission has given the approval under paragraph one, the licensee shall have the following rights:

(1) to lay lines or install any accessories for the provision of telecommunications service on or along the poles, ducts or any structures having similar application of other licensees or State agencies or public utility providers. In such case, such other licensees or State agencies may not refuse such action but may demand a necessary utilisation charge;

(2) to insert or install poles, lay lines, place ducts or install any accessories for the provision of telecommunications service on the land which is State property, provided that the licensee shall inform the State official in charge of that land in advance and comply with the criteria and conditions prescribed by the State official in charge of such land;

(3) to insert or install poles, lay lines, place ducts or install any accessories for the provision of telecommunications service on other persons' land, provided that an agreement must be made with the owner or occupying person of such land in accordance with the guideline prescribed in the Notification by the Commission.

In the case where the licensee is unable to implement the actions under paragraph two because the permission is not obtained or the demanded cost or compensation is excessive when taking into account the useful conditions, the licensee may make a request to the Commission for consideration. If the Commission deems that the implementation of the licensee is inevitably necessary and will not cause undue damage to the State agency or the owner or occupying person of such land or property, the Commission shall have the

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power to notify the use of land or property for that purpose to the State official in charge of the land or property or the owner or occupying person of the land or property at least thirty days in advance. Such notice shall contain the date, time and activity to be undertaken.

The person who has been notified under paragraph three may, within thirty days from the date of receipt of the notice, file a petition against the use of the land or property for that purpose on the grounds of unjustifiable cause or on the grounds that such implementation would cause serious damage to the utilisation of the land or property with the Commission for decision. The decision of the Commission shall be final.

After the period notified by the Commission under paragraph three has expired and the licensee has paid the compensation for the use of the land or property under section 40, the licensee shall have the right to use the land or property for the implementation under paragraph two subject to the criteria prescribed in the Notification by the Commission. The use of the land or property shall not cause nuisance or shall not affect the nature nor depreciate the utilisation of such land without reasonable cause.

Section 40. The licensee shall pay compensation for the use of land under section 39 at the amount prescribed by the Commission.

In the case where the person in charge of the land or property or the owner or occupying person of the land or property declines to accept the compensation under paragraph one, the licensee shall place the compensation with the Commission in accordance with the criteria prescribed by the Commission.

The licensee or the owner of the land or the official in charge of the land who is not satisfied with the amount of compensation prescribed by the Commission under paragraph one shall have the right to file a lawsuit with the Administrative Court.

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Section 41. When the State official in charge of the land or property or the owner or occupying person of the land has been notified in advance in accordance with the criteria prescribed by the Commission, the licensee shall have the right to lay lines above or across the land which is State property or owned by any other person without obtaining consent, if such action does not affect the utilisation of the land.

The State official in charge of the land or property or the owner or occupying person of the land may instruct the licensee to lay lines in the area where the utilisation of their land is not affected. If any damage is caused from such action, they shall have the right to claim for damages from the licensee. In this regard, the provisions of section 39 and section 40 shall apply, *mutatis mutandis*.

The provision of this section shall apply to the implementation under section 39, paragraph two (1), *mutatis mutandis*.

Section 42. The licensee may enter the land on which the telecommunications network, poles, lines, ducts or equipment are located for inspection, maintenance, repair or prevention from any possible harm or damage, by providing a written notice to the occupying person of such land at least thirty days in advance, except for in the case of an emergency that requires prompt remedy of the damages incurred, in which case, the licensee may enter the land promptly to take remedial action.

If there is any damage arising from the action under paragraph one, the person suffering the damage may claim compensation for such damage from the licensee.

Section 43. In the case where the equipment of a telecommunications service user has caused telecommunication disturbance or may cause damage to a telecommunications network or device used for telecommunications business operation of the licensee, the

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licensee shall notify such service user, in writing, to change or correct such equipment within a reasonable timeframe.

In the case where the service user fails to take action according to the notice under paragraph one and the use of such equipment still continues to cause telecommunication disturbance or likely cause damage to the telecommunications network or device used for telecommunications business operation of the licensee, the licensee may temporarily suspend the provision of telecommunications service to such user until the user has taken action in compliance with the notice.

In the case of urgent necessity, the licensee may immediately suspend the provision of telecommunications service and inform the user later.

Section 44. No person may damage, destroy, devalue or render useless to a telecommunications network, poles, lines, ducts, transmission equipment or any other devices used for providing telecommunications services or in telecommunications service stations.

For the purpose of this section, the Commission may prescribe in the Notification measures to protect those things under paragraph one, as necessary.

CHAPTER V

RIGHTS OF SERVICE USER

Section 45. Any person who is in trouble or suffers damage due to the provision of telecommunications service of a licensee shall have the right to make a complaint to the Commission by filing a written complaint to the Office.

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The written complaint under paragraph one must indicate clear facts and be accompanied by documentary evidence relevant to the case, if any.

During the period of the Commission's consideration of the complaint, if requested by the complainant, the Commission shall have the power to consider requiring the licensee to carry out any act, on a temporary basis, to remedy the damage for the complainant.

Section 46. The Commission shall complete its consideration on a complaint within thirty days from the date of receipt of a written complaint, provided that opportunity must be given to the parties to explain the facts and present their evidence. In the case where the Commission deems that the licensee has committed an act that violates the laws, licensing conditions or contract for service provision or has not been in conformity with good standards of service provision, the Commission shall have the power to order the licensee to carry out rectification within a specified time.

Section 47. In the case where a service user views that the licensee imposes a fee or a service fee at the rate higher than the maximum rate prescribed by the Commission under section 55 or higher than the rate imposed to other service users who use the service of telecommunications of the same characteristics or categories, or views that the licensee collects a fee or a service fee incorrectly, the service user shall have the right to request information on his or her service utilisation from the licensee.

The licensee shall notify the information under paragraph one to the service user within a reasonable timeframe which shall not exceed thirty days from the date of request. In addition, if requested by the service user, the licensee shall provide a document certifying accuracy of the information to the service user and may charge the service user for such preparation, provided that the charge shall not be higher than the actual cost, in accordance with the criteria prescribed by the Commission.

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Section 48. In the case where there are reasonable grounds for suspicion that a licensee has collected a fee or a service fee in any manner under section 47, paragraph one, the service user shall have the right to make a complaint to the Commission, and the provisions of section 45 and section 46 shall apply to this case, *mutatis mutandis*.

In the consideration of the complaint under paragraph one, the licensee shall have a duty to verify the facts to confirm the correctness of the collection of a fee or a service fee.

Section 49. A service user shall have the right to use his or her own telecommunications equipment in obtaining the service from the licensee.

Collection of the fee for the use of the service user's own telecommunications equipment with the service system of the licensee shall be in accordance with the rates and criteria prescribed by the Commission.

In providing telecommunications service, the licensee may not specify the service conditions that force service users to use the telecommunications equipment supplied or specified by the licensee, except for certain categories of telecommunications service which have a technical requirement to use the telecommunications equipment specified by the licensee. The licensee may specify such conditions only after the Commission has approved them. Nonetheless, such specification of the type of telecommunications equipment shall not preclude the right of the service user to acquire the specified type of telecommunications equipment in obtaining the service. In this regard, the licensee may not refuse the provision of service or access to the service system to the service user.

Section 50. The Commission shall establish measures for user protection concerning personal data, right to privacy and freedom to communicate by means of telecommunications.

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The licensee shall have the duty to comply with the measures prescribed by the Commission under paragraph one.

When it is found that there is a person who breaches the rights of a service user under paragraph one, the licensee or the Commission shall take action to terminate such breach and inform the user promptly.

CHAPTER VI

CONTRACT FOR TELECOMMUNICATIONS SERVICE PROVISION

Section 51. A contract between a licensee and a telecommunications service user and any condition in relation to the provision of telecommunications service to be specified by the licensee including the amendment to such contract or condition shall be subject to the Commission's prior approval.

The contract and condition that are valid for approval by the Commission shall at least:

- (1) contain a clear and fair provision concerning the duty and responsibility of a licensee and a service user;
- (2) contain a provision concerning the standard of service provision of a licensee;
- (3) contain a complete and fair provision concerning the types and scope of service expenses, and also contain a provision guaranteeing that no expense apart from that specified shall be collected;
- (4) contain no provision that limits the service user's utilisation without valid reason;
- (5) contain no provision in a way that discriminates against, separates or hinders service users or is unfair to any party.

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When the licensee has obtained the approval for the contract or any condition, the licensee shall have the right to apply such contract or condition to the service user.

For the purpose of this section, the Commission shall have the power to issue a Notification establishing the standard criteria of the contract and condition regarding the provision of telecommunications service, and may prescribe exemption for the contract or condition in particular matter from being subject to the approval from the Commission.

In the case where there is a law providing any criteria in making the contract regarding the provision of telecommunications service for consumer protection, the licensee shall have the duty to comply with the criteria under such law.

Section 52. The licensee shall arrange to disseminate to the public a form of contract and determination of condition for his or her service provision in accordance with the procedures prescribed by the Commission, and shall present the same at the open and noticeable place at the office of the licensee to enable verification by the general public.

Section 53. In the case where a licensee has advertised to guarantee quality standards of his or her telecommunications service provision, the licensee shall have the duty to act in conformity with what has been advertised.

If the licensee fails to provide telecommunications service as advertised, the Commission shall have the power to order the licensee to carry out rectification to ensure conformity with the advertisement.

Section 54. Any contract or agreement for the telecommunications business operation and the telecommunications service provision prescribed in the Notification by the Commission which will be entered into by a licensee with a foreign government, international organisation and a person or juristic person in foreign countries including the

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amendment or cancellation of such contract or agreement shall be subject to the Commission's prior approval, except for in the case of regular procurement.

The licensee shall submit a copy of each of the contracts or agreements made with foreign governments, international organisations, and persons or juristic persons in foreign countries in accordance with the criteria prescribed by the Commission within thirty days from the execution date of such contracts or agreements, except for the contract or agreement that is related to procurement or a contract or agreement prescribed in the Notification by the Commission to be exempted from being submitted to the Commission.

In the case where the Commission finds that any contract or agreement is made without the approval under paragraph one, or there is any action taken different from that approved by the Commission, the Commission shall have the power to order the licensee to carry out rectification in accordance with the criteria and within the period of time prescribed by the Commission. If the licensee fails to take action within the specified period of time, it shall be deemed as a cause for license revocation.

CHAPTER VII

FEE AND SERVICE FEE IN TELECOMMUNICATION BUSINESS

Section 55. The Commission shall prescribe in the Notification the types and the maximum rate of fees and service fees to be imposed by a licensee on the service users according to the characteristics and categories of the telecommunications business licensed for operation.

Section 56. The establishment of the maximum rate of fees and service fees under section 55 shall:

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- (1) be demonstrated by a clear calculating method;
- (2) be fair to both licensees and service users;
- (3) not be in a way that discriminates against, separates or hinders service users or any person.

Section 57. Each licensee may not impose fees or service fees other than or in excess of the maximum rate prescribed by the Commission under section 55, and shall not impose the rate of fees or service fees in a way that hinders the competition that will result in the restriction of fair competition. The licensee shall impose the same rate for similar characteristics or categories of telecommunications service to his or her service users.

The Commission may require the licensee to reduce or exempt the fees or service fees for providing news, information and knowledge for the purpose of promoting the knowledge of people in accordance with the criteria prescribed by the Commission.

Section 58. A licensee may not collect security money or other monies having the nature of security money. Collection of pre-paid service fees shall be in accordance with the criteria or conditions prescribed by the Commission for the benefit of consumer protection or the public interest.⁴

Violation or failure to comply with this section by the licensee shall be deemed to cause serious damage to the public interest.

The provision of this section shall apply to the contracts for telecommunications service provision made pursuant to this Act.

⁴ Section 58, paragraph one has been amended by the Telecommunications Business Act (no. 2), B.E. 2549 (2006).

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Section 59. A licensee shall arrange to disseminate to the public his or her rate of fees and service fees and inform the same to all service users in accordance with the procedures prescribed by the Commission, and shall present it at the open and noticeable place at the office of the licensee to enable verification by the general public.

If deemed appropriate, the Commission may require a licensee to arrange to have a notification system on the rate of fees and service fees, upon request at no cost, to enable the service users to be informed prior to each usage.

Section 60. In the case where there is a change in economic or social condition or there are any circumstances causing the maximum rate of fees or service fees prescribed by the Commission under section 55 no longer appropriate, resulting in the existence of advantages and disadvantages among licensees or unfairly posing undue burden to service users, the Commission may consider adjusting the rate of fees or service fees to be appropriate.

CHAPTER VIII SUPERVISION

Section 61. For the execution of this Act, a competent official shall have the powers and duties as follows:

(1) to enter the building or premises of operation of a licensee during the period from sunrise to sunset or during office hours of such places, to inspect the business, account books, documentary evidence or relevant information including any action which may violate the provisions of this Act or fail to conform with the requirements stipulated in the license;

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(2) to summon in writing any person to come to give statements or submit any documents or objects in support of consideration;

(3) to inspect and gather facts and then report to the Commission in the case where a licensee has committed an offence or caused damage due to non-compliance with this Act or the conditions stipulated in the license;

In the execution of the duties of the competent official under paragraph one, the person concerned shall render appropriate facilities.

When an entry and inspection have been executed under paragraph one but it is not completed, such action may continue to take place during the period after sunset or outside the office hours of such place.

The execution of the duties of the competent official under this section shall be in accordance with the criteria prescribed in the Notification by the Commission. Such Notification shall indicate the position of a competent official who will exercise the powers and duties under this section and shall also indicate the reason and necessity for his or her right to exercise the powers and duties under this section in each case.

In the execution of the duties under this Act, the commissioners and the competent officials shall be officers under the Criminal Code.

Section 62. In performing the duties, the competent official shall produce his or her identification card to the persons concerned.

The identification card of a competent official shall be in accordance with the form prescribed in the Notification by the Commission.

Section 63. In the case of emergency or necessity for maintenance of public order, national security or economic stability or for protection of public interest, the Commission may order a competent official to possess and use the equipment and tools of a licensee to

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operate the business, or assign a State agency to carry out such act instead on a temporary basis, or order the licensee or his or her staff members to take any action for such purpose until such emergency or necessity has been terminated.

In performing the duty under paragraph one, if the competent official has caused damage to the licensee, the licensee shall have the right to claim compensation for such damage, on justifiable grounds, from the Office.

CHAPTER IX ADMINISTRATIVE ENFORCEMENT

Section 64. In the case where it appears to the Secretary-General that a licensee has violated or not complied with section 9, paragraph five, section 11, section 12, paragraph two or paragraph three, section 13, paragraph two, section 15, section 17, section 18, section 20, section 22, section 23, section 24, section 25, section 26, paragraph two, section 27, section 28, section 29, section 33, section 34, section 38, section 45, paragraph three, section 46, section 49, section 50, section 51, section 52, section 53, section 54, section 56, section 57, section 58 or section 59, the Secretary-General shall have the power to order the licensee to refrain from such violating act or carry out rectification and improvement or perform action correctly or appropriately within a specified period of time.

Section 65. In the case where the licensee who has received the order from the Secretary-General under section 64 is not satisfied with such order, he or she shall have the right to appeal to the Commission within fifteen days from the date of receipt of such order. The decision of the Commission shall be final.

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Section 66. In the case where the licensee fails to comply with the order of the Secretary-General under section 64 and the period for filing an appeal under section 65 has expired, or the Commission has decided to uphold such order of the Secretary-General, when the Secretary-General has issued a warning notice but no action has been taken in compliance with such order, the Secretary-General shall consider imposing an administrative fine in accordance with the law on administrative procedure, which shall not be less than twenty thousand baht per day.

In the case where the licensee still ignores to perform action correctly or violates the license suspension order, or where there is serious damage to the public interest, the Commission shall have the power to suspend or revoke the license.

The determination about which offence is subject to license suspension or revocation shall be as prescribed in the Notification by the Commission.

CHAPTER X

PENELTY PROVISIONS

Section 67. Any person who operates a telecommunications business or uses frequency spectrum for telecommunications business operation without obtaining a license shall be liable to the following penalties:

(1) if an offence is committed by a business operation which is required to have a Type One License, he or she shall be liable to a fine not exceeding one hundred thousand baht;

(2) if an offence is committed by a business operation which is required to have a Type Two License, he or she shall be liable to imprisonment for a term of not exceeding two years or to a fine not exceeding one million baht or to both;

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(3) if an offence is committed by a business operation which is required to have a Type Three License, he or she shall be liable to imprisonment for a term of not exceeding five years or to a fine not exceeding ten million baht or to both.

In the case where the Court renders a judgment declaring that the offender is guilty of an offence under this Act, the Court shall order to forfeit all tools, equipment and any other objects used in committing such offence.

Section 68. Any licensee who expands the service provision without obtaining permission under section 14 shall be liable to imprisonment for a term of not exceeding three years or to a fine not exceeding six hundred thousand baht or to both.

Section 69. Any licensee who violates section 21 shall be liable to imprisonment for a term of not exceeding three years or to a fine not exceeding six hundred thousand baht or to both, and in the case of a repeated violation, the penalty shall be doubled.

Section 70. Any licensee who fails to comply with the order of the Commission under section 31 shall be liable to imprisonment for a term of not exceeding three years or to a fine not exceeding six hundred thousand baht or to both.

Section 71. Any person who performs the standard inspection or certification for devices used in telecommunications without obtaining a license under section 36 shall be liable to imprisonment for a term of not exceeding three months or to a fine not exceeding fifty thousand baht or to both.

Any person licensed to establish a standard inspection and certification agency for devices used in telecommunications, who fails to comply with the conditions prescribed by

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the Commission under section 36, paragraph four, shall be liable to a fine not exceeding ten thousand baht.

Section 72. Any person who violates section 44, paragraph one but the violation does not cause failure to a telecommunications system shall be liable to imprisonment for a term of not exceeding six months or to a fine not exceeding one hundred thousand baht or to both.

Section 73. Any person who damages, destroys, devalues or renders useless to the mark, buoy or any other object set up for the protection of a telecommunications system according to the measures prescribed in the Notification by the Commission under section 44, paragraph two shall be liable to imprisonment for a term of not exceeding two years or to a fine not exceeding four hundred thousand baht or to both.

Section 74. Any person who commits an act by any means to illegally intercept, utilise or disclose news or message or any other information communicated via telecommunications shall be liable to imprisonment for a term of not exceeding two years or to a fine not exceeding four hundred thousand baht or to both.

Section 75. Any person who fails to provide convenience to the competent official who performs the duty under section 61, paragraph one (1), or fails to come to give statements or submit any documents or objects as summoned in writing by the competent official under section 61, paragraph one (2) shall be liable to imprisonment for a term of not exceeding one month or to a fine not exceeding ten thousand baht or to both.

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Section 76. Any person who obstructs the performance of duty of the competent official under section 63, paragraph one shall be liable to imprisonment for a term of not exceeding six months or to a fine not exceeding one hundred thousand baht or to both.

Section 77. For all offences under this Act for which the penalty is the imprisonment for a term of not exceeding six months, the Commission shall have the power to settle a fine. In this regards, the Commission may appoint a sub-committee to proceed with the settlement of the fine on its behalf and may establish the settlement criteria or any conditions for the execution of duties of the sub-committee.

In the case where the offence is evident to an investigating officer and such offender has consented to the settlement, the investigating officer shall promptly forward the matter to the Commission for consideration of the settlement of the fine.

When the offender has made payment of the settled amount of the fine, the case shall be deemed settled under the Criminal Procedure Code.

Section 78. (Not enforceable)⁵

(The Constitutional Court Decision No. 10/2556, dated 10 July 2013 rules that section 78 of the Telecommunications Business Act, B.E. 2544 (2001) is in conflict or inconsistent with section 39, paragraph two of the Constitution; therefore, is unenforceable pursuant to section 6 of the Constitution.)

⁵ In the case where the offender liable under this Act is a juristic person, the managing director, manager or any person responsible for the operation of such juristic person shall be liable for the punishment prescribed for such offence, unless such action is proved to be committed without his or her acknowledgement or consent.

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TRANSITORY PROVISIONS

Section 79. The Commission shall, within the period of one hundred and eighty days from the date on which the Commission prescribes in the Notification the licensing criteria under section 8, proceed to issue a telecommunications business license under this Act to the Communication Authority of Thailand and the Telephone Organisation of Thailand in accordance with the characteristics and categories of the business operation, the scope of services and the rights to provide telecommunications services to the extent under the responsibility and operation of the Communication Authority of Thailand and the Telephone Organisation of Thailand, existing on the effective date of this Act.

In issuing a license under paragraph one, the Commission shall establish conditions on the business operation of the Communication Authority of Thailand and the Telephone Organisation of Thailand as deemed appropriate, taking into account the benefits of the people who are currently using the services and the developments for quality and efficient services or any other matters for the achievement of the objectives of this Act.

The Communication Authority of Thailand and the Telephone Organisation of Thailand shall notify details of the information in relation to their telecommunications business operations to the Commission within thirty days from the effective date of this Act.

During the period when a license under paragraph one has not been obtained, the Communication Authority of Thailand and the Telephone Organisation of Thailand may continue to operate their telecommunications businesses.

Section 80. In the Communication Authority of Thailand's or the Telephone Organisation of Thailand's operation of the telecommunications business under the license issued under section 79, if such agencies have granted permission, concession or contract to

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any person to act as a telecommunications business operator prior to the effective date of this Act, the person who has been granted permission, concession or contract shall have the right to continue to operate telecommunications business within the existing scope and rights under the permission, concession or contract until such permission, concession or contract is terminated.

The telecommunications business operation of the person who has been granted permission, concession or contract under paragraph one shall be subject to the criteria under this Act and the conditions prescribed by the Commission on the basis of free and fair competition. In this regard, it shall be deemed that such person has the same rights, duties and liabilities as a licensee under this Act. For any offence under this Act which is deemed as a cause of license revocation by the Commission, if such offence is committed by the person who has been granted permission, concession or contract, the Commission shall have the power to order to revoke such permission, concession or contract.

Any agreement to change the conditions of permission, concession or contract, which is not to reduce or limit the rights concerning telecommunications business operation throughout the remaining period of validity of such permission, concession or contract, shall not be regarded as an act that affects the validity of the permission, concession or contract.

In the case where any person who has been granted permission, concession or contract enters into an agreement with the Communication Authority of Thailand or the Telephone Organisation of Thailand to convert such permission, concession or contract into a license under this Act, the Commission shall proceed to issue a license to such person, provided that the rights to operate a telecommunications business shall be under the scope of services previously agreed upon by the parties and within the remaining period of time of such permission, concession or contract insofar as they are not in conflict or inconsistent with the provisions of this Act. Section 79 shall apply to the issuance of such license, *mutatis mutandis*.

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The provision of this section shall apply, *mutatis mutandis*, to any person who has been granted permission, concession or contract by other State agencies, as existing on the effective date of this Act.

Section 80/1⁶. For the purpose of implementation of section 79 and section 80, the Communication Authority of Thailand or the Telephone Organisation of Thailand shall also mean companies established by converting the capital of the Communication Authority of Thailand or the Telephone Organisation of Thailand into equity shares of the respective companies under the law on State enterprise corporatisation in order to operate telecommunications business.

Section 81. When the Commission has prescribed in the Notification the licensing criteria under section 8, if the person who has legally operated to provide telecommunications service for the period of not less than one hundred and twenty days prior to the existence of such Notification and is not subject to section 79 and section 80 wishes to continue his or her service, he or she shall file an application for a license under this Act within ninety days from the date on which the Commission has prescribed such Notification. During such time, such person may continue to provide telecommunications service. In this regard, the Commission must complete its consideration of the license application within ninety days from the date of receipt of the application.

The provision of paragraph one shall apply, *mutatis mutandis*, in the case where the Commission prescribes in the Notification the additional characteristics and categories of telecommunications business after the Notification under paragraph one has been prescribed.

⁶ Section 80/1 has been added by the Telecommunications Business Act (No. 2), B.E. 2549 (2006).

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Countersigned by:

Police Lieutenant Colonel Thaksin Shinawatra
Prime Minister

Office of the Council of State

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